

(b) Where the Department has taken remedial action as described in paragraph (a) of this section, it will notify the recipient organization orally of the remedial action within one business day of its imposition and in writing within seven business days of its imposition. The written notice will conform to that described in § 77.5(a).

(c) After receipt of the written notice, the recipient organization will have the same opportunity to respond as described in § 77.5(b)(1).

(d) The Department will issue a final decision in writing no later than twenty days following receipt of any response submitted by the recipient organization.

## **PART 78—CONDITIONS FOR WAIVER OF DENIAL OF FEDERAL BENEFITS**

### **Sec.**

#### **78.1 Applicability.**

#### **78.2 Definitions.**

#### **78.3 Benefits not denied to rehabilitated offenders.**

**AUTHORITY:** Section 5301 of Pub. L. 100–690, the Anti-Drug Abuse Act of 1988, 102 Stat. 4310, 21 U.S.C. 853a.

**SOURCE:** 56 FR 29592, June 28, 1991, unless otherwise noted.

#### **§ 78.1 Applicability.**

This part is applicable to any decision to deny Federal benefits, under authority of 21 U.S.C. 853a, to an individual convicted of a Federal or State offense involving distribution or possession of a controlled substance as defined by the Controlled Substances Act, 21 U.S.C. 802.

#### **§ 78.2 Definitions.**

For the purposes of denying Federal benefits under 21 U.S.C. 853a:

(a) *Deemed to be rehabilitated* means that an individual has abstained from the illicit use of a controlled substance for the period of at least 180 days immediately prior to and including the date of sentencing provided that such abstinence is documented by the results of periodic urine drug testing conducted during that period; and provided further that such drug testing is conducted using an immunoassay test approved by the Food and Drug Adminis-

tration for commercial distribution or, in the case of a State offense, either using an immunoassay test approved by the Food and Drug Administration for commercial distribution or pursuant to standards approved by the State.

(b) *Long-term treatment program or long-term drug treatment program* means any drug abuse treatment program of 180 days or more where the provider has been accredited by the Joint Commission on Accreditation of Health Organizations, the Commission on Accreditation of Rehabilitation Facilities, or the Council on Accreditation of Services for Families and Children, or licensed or otherwise approved by the State to provide drug abuse treatment.

#### **§ 78.3 Benefits not denied to rehabilitated offenders.**

(a) No individual convicted of any Federal or State offense involving the distribution of controlled substances shall be denied Federal benefits relating to long-term drug treatment programs for addiction under 21 U.S.C. 853a(a)(2) if:

(1) The individual declares himself or herself to be an addict and submits to a long-term treatment program for addiction as defined by § 78.2(b), provided that in the determination of the sentencing court there is a reasonable body of evidence to substantiate the individual's declaration that such individual is an addict; or

(2) The individual is, in the determination of the sentencing court, deemed to be rehabilitated as defined by § 78.2(a).

(b) No individual convicted of any Federal or State offense involving the possession of controlled substances shall be denied any Federal benefit, or otherwise subject to penalties and conditions, under 21 U.S.C. 853a(b)(2) if:

(1) The individual declares himself or herself to be an addict and submits to a long-term treatment program for addiction as defined by § 78.2(b), provided that in the determination of the sentencing court there is a reasonable body of evidence to substantiate the individual's declaration that such individual is an addict; or

(2) The individual is, in the determination of the sentencing court,